IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 19588 of 2007(F)

PETITIONER:

SUBHA.G.S., L.D.CLERK,
SPECIAL EMPLOYMENT FOR PHYSICALLY
HANDICAPPED, KAKKANAD, ERNAKULAM.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:
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1. THE DIRECTOR OF EMPLOYMENT,
DIRECTORATE OF NATIONAL EMPLOYMENT SERVICE,
KERALA, TRIVANDRUM.

2. THE ADMINISTRATIVE OFFICER,
OFFICE OF THE DIRECTORATE OF NATIONAL
EMPLOYMENT SERVICE, KERALA, TRIVANDRUM.

3. THE SUB REGIONAL EMPLOYMENT OFFICER,
SPECIAL EMPLOYMENT EXCHANGE FOR PHYSICALLY
HANDICAPPED, CIVIL STATION, KAKKANAD, ERNAKULAM.

4. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT,
LABOUR AND REHABILITATION DEPARTMENT,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Antony Dominic, J.

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W.P(C).No.19588 of 2007

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Dated this the 10th day of August, 2007.

JUDGMENT

Petitioner, a Lower Division Clerk, on her appointment by Ext.P1, was working in the Special Employment Exchange for Handicapped, Ernakulam. In this Writ Petition, her complaint is against Ext.P2 order by which she has been deployed to Mundathikode Grama Panchayat. Ext.P2 order makes reference to an order issued by the Local Self Government Department, which has been produced by the petitioner as Ext.P3. Ext.P3 shows that one N.R.Rajan, who was on deployment to the Local Self Government Department, had completed his tenure and has to be repatriated back to the parent Department and that the petitioner's deployment is to the post which he vacates in the Panchayat. It is the specific case of the petitioner as pleaded in paragraph 5 of the Writ Petition that although Rajan was deployed to the Panchayat on his request in the year 2003, he did not join the Panchayat since at the time of the order

deploying him was issued, he was promoted as Junior Employment Officer. It is also stated that Rajan was working as Junior Employment Officer in the Town Employment Office at Muvattupuzha for the last more than three years.

2. In the counter affidavit filed by the respondent in paragraph 3, it is stated that Rajan was promoted as Head Clerk and then as Junior Employment Officer when deployment order was received and therefore, Rajan could not be deployed since the post to which he deployed was in the clerical cadre. It is stated that in spite of this in the deployment orders, Rajan's name was included and it is on that basis, the respondents are seeking to justify the deployment of the petitioner.

3. Learned counsel for the petitioner submits that the pleadings in this case itself would show that while issuing Ext.P2 order, there was total absence of application of mind and according to the counsel, respondents presumed that Rajan was in fact on deployment. Learned Government Pleader on the other hand submitted that the endeavour of the Government is to make use of the excess hands in the Department and that the Government is entitled to make suitable deployment.

4. Having heard the submissions of both sides, I am inclined to agree with the counsel for the petitioner. On a reading of Exts.P2 and P3, one gets an impression that Rajan was in fact on deployment. It is on that basis that the petitioner has been ordered to be deployed. However, the facts reveal that it was otherwise and the respondents now want to justify the action on the basis that there was excess staff available in the Department, which had to be made profitable use of. Although the respondents cannot be found fault with for deploying the excess work force available, no doubt when they issued Exts.P2 and P3 orders, there was total non-application of mind. It is pointed out that as the petitioner did not succeed in getting any interim order in this case, she got herself relieved from Ernakulam and has joined at Thrissur as ordered in Exts.P2 and P3.

5. Having regard to the aforesaid facts, I am inclined to direct the respondents to reconsider the matter and take a decision on the deployment of the petitioner to Mundathikode Grama Panchayat adverting to all relevant aspects. I make it clear that I should not be understood as having held that the

respondents are not entitled to deploy any person they deem fit. I also clarify that I have not expressed merits of the other contentions raised by the petitioner.

6. In the result, Writ Petition is disposed of directing the respondents to reconsider the case of the petitioner for deployment. However, this order will not affect the continued implementation of Ext.P2. Depending upon the nature of the order to be passed, if necessary, Ext.P2 will be reviewed. Decision shall be taken within a period of two months from the date of receipt of a copy of this judgment.

Antony Dominic,
Judge.

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